REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **FAO(OS) NO. 552 OF 2006**

% **Date of Decision** : 7th December, 2007.

GAURAV NAGPAL .... Appellant in person.

VERSUS

SUMEDHA NAGPAL .... Respondent.
Through Mr. Rajat Aneja, Advocate.

CORAM:
HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. The appellant, Mr. Gaurav Nagpal is husband of Mrs.Sumedha Nagpal, the respondent. He impugns the Order dated 5th May, 2006 passed by the learned Single Judge in I.A. No.6848A/2000 in CS(OS) No.1844/2002 granting maintenance

of Rs.25,000/- p.m. w.e.f. 1st August, 2000 till the disposal of the Suit filed under Section 18 of the Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as the Act, for short).

2. The parties got married on 14th October, 1996 and have a child. Custody of the child is not the subject matter of the present appeal and the suit out of which the present appeal arises. We are informed that the question of custody of the child is now subject matter of an appeal filed by the appellant before the Supreme Court as the Guardianship Court and the High Court have decided the said question in favour of the respondent-wife.

3. Though no divorce proceedings are pending between the parties, it is apparent that there are disputes and differences between the two of them which has resulted in several litigations and criminal cases with allegations and counter allegations against each other. However, the short question before us is the quantum of interim maintenance which should be awarded and paid to the respondent by the appellant.

4. The respondent belongs to a middle class family and is presently teaching in a school and earning about Rs.10,000/- p.m. The appellant, on the other hand, claims that he is not gainfully employed and is entirely dependent upon his family members. He relies upon his income tax returns. He, however, admits that the child is studying in G.D. Goenka Public School. He further admits that he is residing at Sainik Farm and also owns several immovable properties. It is however stated that the factum that he owns immovable properties should not be taken into consideration as he is not earning any regular income from the said properties.

5. Right to maintenance is an incidence of status from an estate of matrimony. It has its basis in social conditions in the United Kingdom where a married woman was economically dependent upon her husband and was intended to secure justice to her. Section 18 of the Act recognises, accepts and gives legal right to a married woman to claim maintenance from her husband subject to the condition that the requirements of the

Sections are satisfied. Section 18 itself does not specify the minimum or maximum amount that can be awarded as maintenance to a wife. This is determined by the Courts keeping in mind the social and economic status of the parties, reasonable want and requirements of the wife and income and status of the husband. Maintenance awarded to the wife should be sufficient to enable her to live in somewhat the same degree of comfort as was available in her matrimonial home but it should not be exorbitant and so high that the husband-non-applicant is unable to pay and exposes him to contempt or other coercive proceedings. Lifestyle of the parties during happier times and comparison of the lifestyle of the claimant-applicant after the relationship has soured, has to be taken into consideration to determined just and fair maintenance to be awarded to the wife and what should be paid by the husband. The maintenance awarded has to also take into consideration the income and earnings of the husband-non-applicant.

6. Learned Single Judge in the impugned Order dated 5th

May, 2006 has referred to the pleadings of the parties and thereafter satisfied himself whether the Petition under Section 18 of the Act is maintainable and the conditions mentioned in the said Section are prima facie satisfied. We have also examined the said Petition and the allegations made therein by the respondent against the appellant, to justify the claim for maintenance. We are satisfied that the respondent has been able to make out a prima facie case on maintainability of the petition under Section 18 of the Act. A perusal of the averments made in the said petition indicates that there are allegations of physical violence, threats to the respondent and her family members. We are not reproducing the said allegations, least it causes a prejudice to the appellant. In fact it was the quantum of interim maintenance fixed by the learned Single Judge which was seriously contested and argued before us. The fact that the respondent may be entitled to claim maintenance was not seriously challenged and questioned before us in this appeal against the order awarding interim maintenance.

7. The appellant had relied upon his income-tax returns and the figures mentioned therein in support of his contention that the interim maintenance of Rs.25,000/- fixed by the learned Single Judge is exorbitant and unreasonable. It was also contended that the income and properties of the HUF of which the appellant is a member cannot be taken into consideration while computing interim maintenance. It was urged that the respondent was guilty of fraud as she had failed to disclose her employment and the fact that she was earning about Rs.10,000/- per month.

8. The Courts in India while deciding the question of maintenance, interim or final, are conscious of the fact that there is a tendency among parties not to disclose truly, fully and completely, the income earned by them. This is more so in cases of self-employed persons or persons employed in unorganized private sectors where there is lack of transparency and tendency to conceal income earned for various reasons. It is admitted in the Government and independent survey reports that unaccounted form of money and wealth accounts for, or is equal

to about 20% of the country's Gross Domestic Product. (See, Report of Indra Gandhi Institute of Development Research-titled *'India Development Report 1999-2000'*). Some other surveys give a higher percentage.

9. Courts while deciding the matters relating to maintenance including interim maintenance can take into account social and economic ills and unethical malpractices prevailing in the society at the given time. Sections 56 and 57 of the Evidence Act, state that Courts shall take judicial notice of all matters of public history, literature, science or art. Recognition of facts without formal proof is a matter of expediency, and need and wisdom to recognise and accept facts in public knowledge is unquestionable. In ***Onkar Nath versus Delhi Administration*** reported in (1977) 2 SCC 6, it is observed that no Court insists on formal proof, by evidence, of notorious facts of history, past or present. Judicial notice, in such matters, takes the place of proof and is of equal force. In fact as a means of establishing notorious and widely known facts, it is superior to formal means

of proof.

10. Keeping these aspects in mind learned Single Judge in the case of ***Bharat Hegde versus Saroj Hegde*** (C.M.(M) No.40/2005) has held that in cases of self-employed persons or persons employed in unorganized sector, tax compliance is an exception and tax avoidance is a norm and therefore in each case the Court has to carefully examine and verify whether or not the income disclosed by a party is truthful and correct. In paragraph 19 of this judgment it was observed as under:-

> "19. As noted herein above, unfortunately, nobody pays proper taxes to the government. Self employed persons seldom disclose their true income. Prudence and worldly wisdom gained by a Judge before whom citizens of all stratas of society litigate it can always be used by a Judge to broadly ascertain as to what is going on in the society. By no means, the said knowledge can be used where the law requires a fact to be conclusively proved. But where the law requires a judge to form an opinion based on a host of primary data, a Judge can formulate an opinion pertaining to the likely

> income from the capital asset of the husband."

11. In this case the learned Single Judge has culled out eleven factors that should be taken into consideration for deciding an application under Section 24 of the Hindu Marriage Act, 1955 the same are :-

> 1. "Status of the parties.
> 2. Reasonable wants of the claimant.
> 3. The independent income and property of the claimant.
> 4. The number of persons, the non-applicant has to maintain.
> 5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.
> 6. Non-applicant's liabilities, if any.
> 7. Provision for food, clothing, shelter, education, medical attendance and treatment of the applicant.
> 8. Payment capacity of the non-applicant.
> 9. Some guess work is not ruled out while estimating the income of the non-applicant when all sources or

correct sources are not disclosed.

10. The non-applicant to defray the cost of litigation.

11. The amount awarded u/s. 125, Cr.PC is adjustable against the amount awarded u/s. 24 of the Act."

12. The said judgment of the learned Single Judge of this Court has been followed in the case of ***Vinod Jolly versus Sunita Jolly*** (RFA Nos. 122/2007 and 263/2007) decided on 25th May, 2007 reported in 2007 (97) DRJ 205, after holding that reliance on income-tax returns in the context of business owned by the appellant would be of no avail.

13. If we examine the pleadings of the parties in the present case and also the lifestyle of the appellant and the list of immovable properties owned by him, it is clear that he is a man of substantial means and is living a comfortable and luxurious life. The appellant is residing in a house located at Sainik farms, stated to be owned by his brother and constructed on 3000 sq. yds of land. The son of the parties is studying in G.D.Goenka

Public School, one of the most expensive public schools in Delhi and is also, as per the appellant himself, participating and going for out-door activities like lawn tennis, swimming, photography, taekwando, etc. It is also admitted that an expenditure of Rs.10,000/- per month is being incurred on the child by the appellant. The appellant's brother has controlling interest and is managing the affairs of a public limited company which as per the allegations made in the Petition under Section 18 of the Act has turnover of about Rs.400 crores. The appellant has admitted that he has close ties with his brother and mother. This fact can be inferred from the fact that the Nagpal family has some assets which are stated to be owned by a Joint Hindu Family, of which the appellant is a member.

14. The following chart gives details of various properties which as per the respondent are owned by the appellant and the reply and contentions raised in rebuttal by the appellant:

PROPERTIES

AS PER THE RESPONDENT	AS PER THE APPELLANT
1. Factory measuring 1000 sq. yds at 25, MIE Bahadurgarh, Haryana with machinery worth Rs. 50 lacs and investment of Rs.25 lacs as working capital.	1. Ownership of land and factory is admitted. It is however denied that machinery worth Rs.50 lacs and Rs.25 lacs towards working capital as on 31.03.2007 was made. But investment made towards machinery installed and working capital limit have not been stated.
2.The appellant was owner of plot measuring 1.8 acres situated at Vill. Larsohli, opp. Motel Kanak Garden near Sonepat, Haryana which was sold for Rs.28 lacs after June, 1999.	2.Ownership of land is admitted. It is however denied that the land has been sold. It is claimed that the land being an agricultural land does not yield any income.
3. The appellant is owner of 1 acre and 300 sq. yds of land in Vill. Kamakspur, distt. Sonepat, Haryana.	3.It is stated that the agricultural land was owned by Padmaja Polymers Pvt. Ltd.-a company belonging to and owned by the appellant but has been sold. The appellant has not given the date of sale and the consideration received.
4. 6 canals of land in Vill. Began, Distt. Sonepat, Haryana.	4. The appellant has stated that the land is an agricultural land which yields no income and belongs to Padmaja Polymers Pvt. Ltd. a company belonging to and owned by the appellant.

5.Land situated in Lal Dora, Najafgarh, Nangloi Road, Delhi.	5. It is admitted that the appellant owns 100 sq. yds of land in Lal Dora, Om Vihar, Delhi. It is stated that the market value of the land is only Rs.1 lacs and it does not yield any income.
6. 300 sq. yds of property No. B-17, Gujranwala Town, Part II, Delhi was sold by the joint Hindu family of which the appellant is member for Rs.1.40 lacs in June, 1999.	6. It is stated that the property consist of 233 sq.yds. and belonged to Mr. Motilal Nagpal, HUF and after the demise of Motilal Nagpal the same belonged to Smt. Padma Nagpal, HUF and as HUF has not been dissolved its financial affairs are not relevant for the purpose of the present Petition. The details of the sale consideration received have not been stated.
7. Plot no. 7209, DLF, Gurgaon, Haryana measuring 250 sq. yds was sold on 16.04.1997 for Rs.33 lakhs but the sale was under-valued on paper to avoid payment of taxes.	7. The plot was jointly owned by the appellant and his mother in equal share and was sold for Rs.25 lacs.

8. Farm house on plot no.C-129 (C.1129) Ansal Housing Pvt. Ltd., Gurgaon valued at Rs.10 lacs.	8. The plot is jointly owned by the appellant, his mother and brother with each having 1/3rd undivided share. There is no income from the said plot and the value of the said plot is not more than Rs. 8 lacs. The said plot has not yet been registered in the name of the appellant and others.
9. Flat at Silver Oak Apartment, DLF, Gurgaon, Haryana which was sold on 24.05.1997 for total consideration of Rs.22 lacs.	9. The ownership of the flat is admitted but it is stated that the flat was sold for Rs.9 lacs as the appellant was unable to pay the instalments in time and had defaulted in his commitments.
10. Plot at Tirath Nagar, Karala Village, Delhi which was sold for Rs.6 lacs on 26.06.1997.	10. Ownership and sale are admitted but it is claimed that the land was agricultural land and was sold for Rs.1.8 lacs.

11. Appellant is running business in the name of M.G. Polymers, A.K. Investments and Swastic Holdings and has control in interest in Padmaja Irrigation Pvt. Ltd and Padmaja Polymers Pvt. Ltd.	11.It is admitted that the appellant is carrying on business in the name of M.G. Polymers and A.K. Investments, being proprietorship concerns of the appellant. The appellant also admits that he has control in interest in Padmaja Irrigation Pvt. Ltd. and Padmaja Polymers Pvt. Ltd but it is stated that both the companies have run into losses and have stopped manufacturing activities.

15. It is clear from the above that the appellant owns substantial immovable properties in and around Delhi. The value of these properties has gone up substantially during the last 3-4 years and have considerable market value. In addition, the appellant had also sold some properties in the late 1990s, when again the property prices were reasonably high. The appellant is a man owing considerable wealth and assets therefore it is natural to expect that he has a high standard of living and is used to comforts and luxury. HUF may be a separate assessee under the Income Tax Act, 1961 but it is not an independent juristic

person. The appellant has failed to give details of the assets and income of the HUF of which he is a co-parcenor.

16. Learned counsel for the appellant laid considerable emphasis on the Order passed by the Income Tax Tribunal for the Assessment Year 1994-95 deleting addition of Rs.68 lacs out of the total addition of Rs.70 lacs made by the Assessing Officer. In this regard we may refer to the last part of the Order dated 27th January, 2004 passed by the Income Tax Tribunal which reads as under :-

> "GP (Gross Profit) disclosed by the assessee is comparable with other similar processes and normally no trading addition is called for. However, in the present case it is seen that the assessee had been making certain payments, which cannot be properly accounted for. The expenses on account of transport have also not been supported by any bill or receipt and the genuineness of all the expenses is doubtful. Keeping in view the extent of such instances, we deem an addition of Rs.2 lakhs to the trading results as reasonable

> (as against Rs.1 lakh sustained by Commissioner of Income Tax (Appeals) and Rs.65 lakhs made by the Assessing Officer."

17. A reading of the above paragraph proves that the Income Tax Tribunal was not satisfied about the accounts maintained and relied upon by the appellant. It was held that some payments had not been accounted for and certain deductions claimed could not be supported by corresponding vouchers. The above findings of the Income Tax Tribunal itself shows that the income tax returns filed by the appellant cannot be relied upon. Even in the reply filed to the Petition under Section 18 of the Act, the appellant has stated in reply to paragraph 14 of the Petition under Section 18 as under :-

> " She would take out money from the Respondent's locker and give it to her parents without the Respondent's consent. When the Respondent learned thereabout and confronted her, she turned violent."

18. The above statements made by the appellant on oath is

an admission that the appellant was in the habit of keeping money in bank lockers and not in his bank accounts. Thus there is substantial material and ground to ignore the income disclosed by the appellant in the income tax returns and assume his income and earnings on the basis of assets owned by the appellant and keeping in view his lifestyle. By this guesswork we can form prima facie opinion about the total quantum of income that the appellant was/is earning. It can safely be stated that award of interim maintenance @ Rs.25,000/- p.m. is not unrealistic and arbitrary.

19. We may note here that the respondent is residing in a DDA flat along with her parents in west Delhi. It is a small apartment compared to palatial house in which the appellant is residing. Keeping these aspects in mind we feel that the interim maintenance awarded by the learned Single Judge cannot be regarded as exorbitant and unreasonable. Of course the final order of maintenance will depend upon the evidence led by the parties and the opinion expressed in the impugned Order and in

this Order are merely prima facie opinions and will not be binding on the court at the time of final decision.

20. We may also note here the objection raised by the appellant that the respondent is guilty of fraud as she did not mention about her employment w.e.f. September, 2000 and salary of about Rs.10,000/- p.m. being earned by her. Similar contention was also raised before the learned Single Judge and an application under Section 340, Cr.P.C. was filed on account of failure of the respondent to disclose the said facts. Learned Single Judge examined the contentions raised and by an Order dated 8th November, 2005 had disposed of the said application, inter alia, holding that the factum of income ought to have been disclosed by the respondent but the respondent had apologised for the said mistake and had stated that the mistake had occurred as full facts were not communicated to her lawyer. Therefore, proceedings against the respondent should be dropped. The said Order passed by the learned Single Judge on 8th November, 2005 in Criminal Miscellaneous No.172/2002 has been accepted

by the appellant and has not been made subject matter of any appeal. In these circumstances this objection raised by the appellant is rejected.

21. In these circumstances, we do not find any merit in the present Appeal and the same is accordingly dismissed. No costs. Dasti.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

DECEMBER 07, 2007.
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